STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 25, 2005
v	No. 250001 Oakland Circuit Court
LAURENCE EARL STOKES, Defendant-Appellant.	LC No. 02-187299-FH

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of two counts of criminal sexual conduct in the third degree (CSC I), MCL 750.520d(1)(a), and one count of criminal sexual conduct in the fourth degree (CSC IV), MCL 750.520e(1)(a), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Complainant testified that, when she was fifteen years old, defendant and co-defendant Deondre Collins[1] penetrated her vagina, mouth, and anus with their penises after she became intoxicated at a party. In a statement given to the police, defendant admitted that he attempted to penetrate complainant, but was physically unable to do so. He acknowledged that he was in the room and was touching complainant while Collins sexually penetrated her. The prosecutor argued and the trial court instructed the jury that defendant could be found guilty either as a principal or on an aiding and abetting theory.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

[1] Defendant and Collins were tried jointly to separate juries. Collins is not a party to this appeal.

A person is guilty of CSC III if he engages in sexual penetration with another person who is at least thirteen years of age but less than sixteen years of age. MCL 750.520d(1)(a). "Sexual penetration" includes any "intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body." MCL 750.520a(1).

Defendant argues that his convictions of CSC III must be reversed because insufficient evidence was produced to establish the element of penetration. We disagree and affirm those convictions. Complainant admitted that she was intoxicated and that she lost consciousness during the incident; nevertheless, she unequivocally identified defendant as one of the perpetrators of the assault. The testimony of a complainant in a sexual assault case need not be corroborated. MCL 750.520h. The jury was entitled to accept complainant's testimony, notwithstanding the fact that it was inconsistent in some respects. *Milstead*, *supra*. Complainant's testimony was sufficient to establish the elements of CSC III. MCL 750.520d(1)(a); *Bulls*, *supra*.

A person who aids and abets the commission of an offense may be tried and convicted as if he had directly committed the offense. MCL 767.39; *People v Smielewski*, 235 Mich App 196, 203; 596 NW2d 636 (1999). To convict a defendant of aiding and abetting a crime, a prosecutor must establish that: (1) the crime was committed by the defendant or another person; (2) the defendant performed acts or gave encouragement that assisted in the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time the defendant gave aid and encouragement. *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004).

Defendant argues that he was denied due process because the prosecutor did not advance the theory that he could be convicted as a principal or as an aider and abettor of Collins until closing argument. We disagree. Defendant did not object to the prosecution's argument; therefore, absent plain error, he is not entitled to relief. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). A defendant may be charged as a principal but convicted as an aider and abettor. *People v Clark*, 57 Mich App 339, 344; 225 NW2d 758 (1975). Both theories advanced by the prosecution were supported by the evidence and encompassed the commission of a single offense. Defendant was not deprived of his right to a unanimous verdict. *Smielewski*, *supra* at 209. No plain error occurred. *Carines*, *supra*.

Furthermore, defense counsel expressly approved the trial court's instructions. By approving the trial court's instructions, defendant has waived review of the propriety of the aiding and abetting instruction on appeal. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000); *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello